APPEAL NO. 93183

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). On January 21, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issue left unresolved from the benefit review conference was whether the Claimant suffered a compensable heart attack on (date of injury). Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(d) and (e) (Rule 142.7(d) and (e)), the carrier requested, with the permission of the hearing officer, the addition of the issue, "whether the Claimant's condition or injury was a result of an ordinary disease of life to which the general public is exposed." The claimant agreed to the additional issue and it was added as an issue at the CCH.

The hearing officer determined that the respondent's (claimant herein) heart attack was a compensable injury which occurred on January 16,1992. Appellant (carrier herein) appeals contending the hearing officer misapplied Article 8308-4.15, that the hearing officer's decision goes beyond the issues formulated at the CCH, that the medical evidence does not support the hearing officer's decision, and that the evidence does not substantiate that claimant's heart attack was work related and requests we reverse the hearing officer's decision. Claimant files a timely response stating that the decision is supported by the evidence and requests we affirm the decision.

DECISION

Determining that there is not a preponderance of the medical evidence to support the hearing officer's decision and that the provisions of Article 8308-4.15 were incorrectly applied, the decision of the hearing officer is reversed and we render a new decision that claimant's heart attack was not a compensable injury sustained in the course and scope of employment.

Initially, in regard to the added issue of whether claimant's condition was "an ordinary disease of life," we note that phrase is a term of art used in the definition of occupational disease in Article 8308-1.03(36) by saying occupational disease ". . . does not include an ordinary disease of life to which the general public is exposed outside of employment. . . ." When the addition of the second issue was discussed, the hearing officer stated that "an ordinary disease of life" is just another way of saying "the natural progression of a preexisting heart condition or disease." We disagree. Both phrases are terms of art which have special meaning in their own context. "An ordinary disease of life," as stated above, is used in the definition of occupational disease, whereas "the natural progression of a preexisting heart condition" is one of the elements which must be considered in deciding the compensability of heart attacks under Article 8308-4.15. The two phrases are not interchangeable. The hearing officer's Conclusion of Law No. 7 that the claimant's injury was not an ordinary disease of life is not applicable to this case.

As to the facts of this case, claimant testified that he was a then 51-year-old

construction carpenter who had worked for (employer) for eight or nine years. Claimant states he was sent to (city), Texas, on January 6, 1992 to work on remodeling employer's store there. Claimant testified that he had taken a company physical a few days before and that he thought he was in good health. Claimant stated on the evening of Sunday, (date of injury), he was working "squeegeeing" water away from a concrete saw which was powered by a gasoline engine. Also in a relatively enclosed space, approximately 20 feet by 10 feet, surrounded by plastic sheeting, were two gasoline-powered "Bobcats." Claimant stated he became ill, was nauseous, belching and had chest pains, all of which he attributes to the exhaust fumes of the gas engines. Claimant states he finished his shift and went to his motel. During the next three days, claimant states, he continued to work his regular shift but continued to have intermittent chest pains which lasted "10 minutes, sometimes longer." On the morning of Thursday, January 16th, while assisting in moving a "frozen food gondola" onto pallets, claimant again experienced chest pains and began rubbing his chest. Claimant was taken to Hospital in (City 1 hospital). At the CCH upon questioning by the hearing officer, claimant testified he had a sharp pain in his left chest, tingling in his left arm and a "hammering pain to his back." The hospital ER report only shows that claimant complained of left-sided chest pains ". . . but has at times been across the chest bilaterally. It does not radiate into the neck or in the left arm." The ER record shows claimant arrived at the hospital at 8:57 a.m., was seen by a nurse at 9:00 a.m. and subsequently released at 10:30 a.m. The examination at the City 1 hospital showed an abnormal EKG, with ". . . inverted T-waves in lead 1, AVL and . . . biphasic T-waves in lead V2 through V6." (Dr. H) saw claimant at the City 1 hospital and diagnosed claimant as having two problems being: 1. ". . . mild gastritis with associated nausea, dyspepsia and belching," and, 2. ". . . significant chest pain, with an abnormal EKG." Dr. H states "I suspect he is having angina, possibly pre-infarction angina. Cannot rule out an early infarction, although at this point I doubt it." Dr. H and medical personnel at City 1 hospital strongly recommended claimant be admitted for further evaluation, explaining ". . . he is placing himself at an unwarranted risk for potential very serious problems by not continuing with his evaluation . . . ." Claimant "continued on his insistence on leaving, signed AMA form and left." Claimant went back to work but was sent home. Claimant states he went to his motel, packed his bags and together with his cousin drove home to (city), Texas. Claimant sought no additional medical treatment on January 16th. The next day claimant suffered more severe chest pains after eating breakfast and went to the (clinic) of Hospital at about 1:35 p.m. on January 17th. Based on the history claimant gave the clinic, the record shows:

> The history he gives me is more of an Angina Pectoris manifested by episodes of chest pain exertional related that lasted as a dull aching like rather for a prolong period of time, he then went home, he ate, he took some Mylanta and after eating the pain got worse despite (sic) of the Mylanta. There was no syncope, he was somewhat weak and tired, but no other acute changes occurred. He was seen by a physician, [Dr. E] at one of the local clinics and was told to seek further consultation and to take some Nitroglycerin. An EKG

> done at that clinic shows T-wave inversion throughout the precordial leads compatible with Myocardial Ischemia, since he came to the office there has (sic) been no changes, except that the pain still triggers by stress.

The diagnosis by Dr. E on January 17th was "chest pain most probably secondary to ischemic heart disease - consider arteriosclerotic heart disease." Claimant was referred to (Medical Dist.) for further assessment and therapy.

The Medical Dist. hospital discharge summary records claimant's history saying ". . . Tylenol makes the pain better and Mylanta worsens the pain. The pain also occurs at rest as well as with activity. On the day of admission, the [claimant] ate at [a fast food restaurant] and the pain recurred very intensely." Claimant was admitted to the ICU and started on "Heparin and Nitroglycerin drip," and an angioplasty was performed. The Heparin apparently caused an "upper GI bleed" and had to be discontinued. Two days after the first angioplasty claimant had a recurrence of chest pain and EKG changes, for which a repeat angioplasty was done. The tests would indicate that claimant, while in the hospital, had a documented heart attack. Claimant was treated by (Dr. B) at the Medical Dist. hospital. Dr. B, on January 20th sent claimant to the University of Texas Medical Center (UTMC) catheterization laboratory. The UTMC report stated "[i]t is unclear if the patient had a myocardial infarction (MI) in the previous weeks but he did have preservation of his R wave." The UTMC report concluded:

1)Coronary artery disease (CAD) involving a 99% stenosis of the mid LAD, total occlusion of the second Dx branch and a 60% stenosis of the PDA.
2)Successful PTCA of the mid LAD lesion from 99% to a 40% residual stenosis with a 3.0mm balloon and a non-obstructing dissection.

Dr. B, claimant's attending cardiologist, in a report dated January 28, 1992, states ". . . in reviewing the patient's history, he suffered his first episode of angina on January 10, 1992." Dr. B goes on to state:

> Based on [claimant's] history of prolonged chest pain one week prior to admission, the presence of small but diagnostic EKG changes of a prior myocardial infarction and the absence of serum enzyme elevations consistent with an acute myocardial infarction. My clinical opinion is that the patient suffered his initial myocardial infarction while at work on January 10, 1992. Although I would conclude that the patient did not acquire atherosclerotic heart disease because of his job, it is clear that he suffered a myocardial infarction while he was physically working and that this myocardial infarction contributed to his present condition. Since hospitalization, [claimant] has suffered a subsequent myocardial infarction during the hospitalization as well as recurrent episodes of severe gastrointestinal bleeding.

Dr. B submitted another letter report to claimant's attorney, dated November 11, 1992, which essentially confirmed his prior opinion and commented on causation as follows:

> Based on his presentation with the onset of angina occurring during the time of work, I feel that there was a relationship between his work and the development of his unstable angina culminating in an infarction. While it is impossible to prove that ulceration of an artery occurred because of the work he was performing, the work he was performing would definitely have exacerbated an acute episode of myocardial ischemia. Continuing to work with recurring episodes of angina did increase the likelihood of a subsequent myocardial infarction.

Claimant's medical records were reviewed by (Dr. Z) at carrier's request. Dr. Z in a report dated April 17, 1992 states "[t]he data available cannot establish that [claimant] had a myocardial infarction (heart attack) prior to hospitalization. Clearly he had a condition known as unstable angina." Dr. Z draws the following conclusions:

> From this data I draw the following conclusions. There is no way in which one can relate this patient's cardiac difficulty to his work. One cannot even say with any certainty that he had a heart attack prior to his hospitalization. Even if he had such a heart attack, I would see no way in which it could be related to his work. His problem, unstable angina, was clearly a result of a natural progression of pre-existing heart disease, namely coronary atherosclerosis. Fortunately, he apparently had a small attack in the hospital and had excellent exercise tolerance on leaving the hospital.

To reinforce, or clarify his report Dr. Z submitted an explanatory report dated August 28, 1992 which stated: "[i]n my opinion, with high medical probability, [claimant's] cardiac disease in no way resulted from an accidental injury traceable to a definite time, place and event in the course and scope of his employment."

We note that the hearing officer cites Dr. B's January 28, 1992 report in his Statement of Evidence. However, in citing Dr. B's report the hearing officer changes the date of injury by quoting ". . . the patient suffered his initial myocardial infarction while at work on January 10 (sic 16), 1992 . . . ." There is no evidence that Dr. B meant to say January 16th. The January 10th date was never mentioned, and Dr. B's date of January 10th may well be in error. If one looks at the preceding paragraph in Dr. B's letter where he again mentions January 10, 1992 followed by the statement "[t]his occurred during work and was shortly thereafter followed by a prolonged episode of retrosternal chest pressure. During the ensuing week, the patient continued to work and during his employment continued to suffer recurrent episodes of angina pectoris" (emphasis added), one could conclude that Dr. B

meant January 12th. If the January 10th date in Dr. B's January 28, 1992 letter is in error, then it should be January 12th (the date of the onset of claimant's chest pains) rather than the January 16th date as changed by the hearing officer. Dr. B's letter goes on to talk about the ensuing week where claimant continued to work. Claimant did not work after January 16th.

The hearing officer' pertinent Findings of Fact and Conclusions of Law were:

FINDINGS OF FACT

4.On (date of injury), at about 9:00 a.m., the Claimant experienced sharp pain in his left chest, tingles on his left arm and hammering pain that went through to his back at the Employer's work site, the employer store in (city), Texas.

5.The physical exertion of the Claimant lifting a frozen food gondola onto pallets and moving it outside the store caused his heart attack.

The Claimant suffered a heart attack, to wit:

a.He had sharp pain in his left chest, tingles on his left arm and hammering pain through to his back.
b.His EKG showed abnormalities, an abnormal O-wave on lead III, biphasic T-waves in lead V2 through V6, inverted T-waves i lead 1 and aVL.
c.He had angina on exertion from January 12, though 16, 1992, especially rapid onset in the presence of carbon monoxide.
d.He had unexplained elevated enzymes levels, CPK of 232 and LDH of 180, at or near their maximum limits, shortly after his heart attack.

7.The Claimant had coronary artery disease in his left anterior descending artery, it's second diagonal branch and right posterior descending artery.

8.The Claimant's heart attack, an anterior myocardial infarction, was caused by his work and work related factors, to wit:

a.The Claimant was working as a construction carpenter lifting and moving heavy frozen food equipment.

b.The work place atmosphere on (date of injury) containing carbon monoxide brought on the rapid onset of angina.
c.The Claimant had the recurrence of angina on January 13, 14, 15, 1992

upon exertion resulting from his work as a construction carpenter.

d. The space in which the Claimant was working was enclosed by floor to ceiling plastic sheets which reduced ventilation and increased the temperature.

e. There were gasoline powered engines running and producing carbon monoxide in the enclosed space where the Claimant was working.

9. The Claimant was not suffering or experiencing any emotional or mental stress at the time of his heart attack.

CONCLUSIONS OF LAW

2. The Claimant's heart attack occurred at a definite time, about 9:00 a.m., on Thursday, (date of injury), and place, the store in (city), Texas.

3. The Claimant's heart attack was caused by the specific event of his physical exertion in lifting large, heavy frozen food equipment, placing it on pallets and moving the equipment outside the store in the course and scope of his employment.

4. The preponderance of the medical evidence regarding the Claimant's heart attack indicates that the Claimant's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack because when compared the work outweighs the natural progression of a preexisting heart condition or disease.

5. The Claimant's heart attack was not triggered by an emotional or mental stress.

6. The Claimant's heart attack is a compensable injury under the Act.

7. The Claimant's injury was not the result of an ordinary disease of life to which the general public is exposed.

Carrier attacks the hearing officer's decision alleging it "clearly" goes beyond the scope of the issues formulated because the hearing officer found the date of injury to be January 16th, whereas the issue recited the date of the heart attack as January 12th. Carrier states "[t]he finding of facts relating to an incident on (date of injury) was unnecessary to resolve the issue whether a compensable heart attack occurred on (date of injury)." We

have held a lack of pleading specificity, in itself, has not required reversal of a decision. *See* Texas Workers' Compensation Commission Appeal Nos. 91123, decided February 7, 1992, and 91199, decided June 26, 1992. Similarly, a variance between a date specified in a claim and a date, or approximate date, developed out of evidence at hearing has not precluded affirmance when investigation of the claim had not been thwarted. Appeal No. 92199, *supra*. In the instant case, claimant, at the CCH, had a layman's belief that he had a heart attack on January 12 when his symptoms first appeared. Had the medical evidence (as discussed later) supported a date other than January 12th, (the date listed in the issue and the date claimant believes he had his attack) the hearing officer could properly make a finding of another date. In this case the facts of when claimant's symptoms first appeared and when claimant first went to the City 1 hospital were not in dispute and any investigation was not thwarted. Carrier's point on this issue is without merit and is denied.

The pertinent portion of the 1989 Act dealing with heart attacks is Article 8308-4.15 (section 4.15) which provides:

> A heart attack is a compensable injury under this Act only if:
> (1) the attack can be identified as:
> (A) occurring at a definite time and place; and
> (B) caused by a specific event occurring in the course and scope of employment;
> (2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and
> (3) that attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

In several cases we have discussed the new and more demanding standards for the compensability of heart attacks under the 1989 Act, and we noted the case law developed under prior legislation. Not only does the 1989 Act require medical evidence to the level of a preponderance, but it must indicate that the employee's work rather than the progression of preexisting heart disease was a substantial contributing factor of the attack (section 4.15(2)). In Texas Worker's Compensation Commission Appeal No. 91009, decided September 4, 1991, we said the medical evidence must be compared or weighed as to the effect of the work and the natural progression of a preexisting heart condition. In Texas Workers' Compensation Commission Appeal No. 92170, decided June 17, 1992 decedent stopped work, grabbed his chest, and went to the hospital immediately after assisting in lifting a heavy tire. We affirmed the hearing officer in finding the heart attack not compensable because the medical evidence regarding the attack failed to show that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack. The doctor in that case stated

the decedent's work activity "could have" contributed to the heart attack. In Texas Worker's Compensation Commission Appeal No. 93121, decided April 2, 1992 we reversed a hearing officer who found a heart attack compensable because the medical evidence merely stated the work-related exertion was "probably related" which amounted only to a comment that the exertion was a contributing factor, rather than a substantial contributing factor and failed to weigh the requirement that the work, rather than the natural progression of a preexisting heart condition, be the substantial contributing factor. In other opinions, 91009, *supra*; Texas Workers' Compensation Commission Appeal No. 91044 decided November 14, 1991; and Texas Workers' Compensation Commission Appeal No. 91063, decided December 5, 1991, there was either no medical evidence offered by the claimant relating the cause of the heart attack to work or the medical evidence offered by claimant, at most, indicated only that work was a contributing factor rather than a substantial contributing factor.

This case fails on three grounds: 1. although the hearing officer recites a definite time, place, and specific event leading to the heart attack, that recitation is not borne out by the evidence, as discussed below; 2. Dr. B's opinions, as those most favorable to the claimant, would only tend to show that the work related incident was a contributing factor, rather than a substantial contributing factor; and 3. the only weighing and comparing of medical evidence as to the effect of the work and the natural progression of a preexisting heart condition was by Dr. Z, who opined claimant's heart attack was due to the natural progression of the preexisting heart disease.

The hearing officer in his Finding of Fact No. 4 finds that claimant suffered a heart attack at employer's store at about 9:00 a.m. on (date of injury), his last day on the job in Temple, Texas. There is virtually no evidence to support this finding. Even the claimant, in layman's terminology, testified he believed he had a heart attack on January 12th, not on January 16th. The testimony claimant gives about pain in the left chest, tingling in the left arm and hammering pain is contradicted by the history claimant gave at the City 1 hospital. Dr. H at the City 1 hospital seems to indicate claimant did not have a heart attack but was "having angina, possibly pre-infarction angina" and doubts that claimant has had an infarction. As pointed out by the carrier, the hearing officer finds that the heart attack occurred at employer's store at about 9:00 a.m., yet the hospital ER record shows that claimant was being examined in the ER by a nurse at that precise time. Although we do not require a finding of the time and place to the precise minute or precise location, it appears unlikely that claimant had a heart attack before 9:00 a.m. on January 16th, was examined in the hospital and then released at 10:30 a.m., albeit against medical advice. The hearing officer apparently relies on Dr. B's report, but as noted earlier, Dr. B gives a date of January 10, 1992 for an episode of angina. Even assuming Dr. B's date of January 10th was in error, reading the entire January 28, 1992 letter in context, one might arrive at a conclusion Dr. B meant January 12th. There is no evidence that would indicate Dr. B meant January 16th. Consequently the hearing officer's recitation that the attack occurred on (date of

injury) is against the great weight and preponderance of the evidence.

Dr. B attempts to connect claimant's heart attack to his work by saying in his November 11, 1992 letter "[claimant's] initial episode of chest discomfort (presumably January 12th) occurred at work lifting heavy objects." (Emphasis added.) Dr. B continues stating he feels there is a relationship between claimant's work and the development of unstable angina, culminating in an infarction. Dr. B conceded "it is impossible to prove that ulceration of an artery occurred because of work he was performing, (however) the work he was performing would definitely have exacerbated an acute episode of myocardial ischemia." It would appear that Dr. B is saying that although impossible to prove, claimant's work exacerbated his heart condition and therefore might be, or was, a contributing factor to claimant's infarction, whenever it occurred. Dr. B's reports fall short of saying with reasonable medical probability that claimant's work was a substantial contributing factor of the attack rather than the natural progression of a preexisting heart condition or disease.

The hearing officer in Conclusion of Law No. 4 recites section 4.15 that claimant's work, rather than the natural progression of a preexisting heart condition was substantial contributing factor of the attack. This bare assertion is unsupported by the factual findings or the medical evidence. The evaluation and testing at the Medical Dist. hospital and UTMC clearly showed claimant with serious preexisting cardiovascular disease. Claimant had coronary artery disease involving a 99% stenosis of the mid LAD, total occlusion of the second Dx branch and a 60% stenosis of the PDA. Even claimant's treating cardiologist, Dr. B, concedes claimant had a serious preexisting heart condition. Nowhere, except in Dr. Z's report, is there the weighing and comparison of the medical evidence regarding the effect of the work and the natural progression of the preexisting heart condition that we have said was necessary. Appeal No. 91009, *supra*. The only medical evidence that did such a comparison or weighing was Dr. Z's report which states that claimant's problem "was clearly a result of a natural progression of pre-existing heart disease, namely coronary atherosclerosis." As we stated in Appeal No. 93121, *supra*, mere recitation of "magic words" or phrases from a statute does not mean a fact finder, or for that matter a reviewer, can ignore the substance of the testimony or evidence.

Finding that the medical evidence and testimony is insufficient to support the decision that claimant suffered a compensable heart attack as contemplated by 8308-4.15, on (date of injury), the decision is reversed and a new decision is rendered that claimant's myocardial infarction (or infarctions) was not a compensable injury sustained the course and scope of his employment. Claimant is not entitled to workers' compensation benefits.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Philip F. O'Neill
Appeals Judge